IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 330 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

DINESH MILLS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 330 of 1992
MR D.D.VYAS for Petitioner - Revenue
MR MANISH J. SHAH FOR MR.JP SHAH for the Respondent - Assessee

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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 19/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. Mr.D.D.Vyas, the learned standing counsel appearing on behalf of the applicant - revenue submits that, through oversight, the applicant - revenue has not filed paper-book, as required by Rules of this Court, but prays for dispensing with filing of the paper-book in light of the fact that the two questions referred for the opinion of this Court stand concluded by decisions of this Court. Accordingly, it is directed that filing of paper-book be dispensed with.

2. The Income-tax Appellate Tribunal, Ahmedabad Bench "A" has referred the following two questions for the opinion of this Court at the instance of C.I.T., Baroda under Section 256(1) of the Income-tax Act, 1961 (the "Act") :

"(1) Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal has erred in holding that a sum of Rs.20,000/- out of motor car expenses is not disallowable on the ground of personal and non-business use of motor car in the hands of the assessee?

(2) Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal is right in holding that the assessee was entitled to investment allowance on computer O.R.G. 200-B Microprocessor? "

3. The assessment year is 1982-83 and the relevant accounting period is 31st December 1981. The assessee, a Limited Company, claimed certain expenses incurred on running of motor cars of the Company. The Assessing Officer disallowed a sum of Rs.20,000/- by way of lumpsum disallowance holding that, as in past, the said sum must have been incurred for non-business and personal expenses. The CIT (Appeals) relied on Tribunal's decision for assessment year 1981-82 in assessee's own case and deleted the disallowance of Rs.20,000/- made out of total motor car expenses. The Tribunal confirmed the order of CIT (Appeals).

4. In the Statement of Case, the Tribunal has stated that, for the immediately preceding assessment, namely, assessment year 1981-82, on identical facts, a reference

has already been made on 14th December 1987. Mr.Manish J.Shah, the learned advocate appearing on behalf of the respondent - assessee, has pointed out that, for the said assessment year, the matter was decided in favour of the assessee in decision rendered on 24th October 2002 in Income Tax Reference No.20 of 1998 by this Court, while answering questions referred at the instance of Revenue.

5. In relation to question No.2, the Assessing Officer disallowed claim of investment allowance on the ground that the Computer O.R.G. 200-B Microprocessor could not be considered as an item of plant and machinery since it was not connected with the manufacturing activity of the assessee. The CIT (Appeals), relying on decision of Bombay High Court in case of C.I.T. v. IBM World Trade Corporation (1981) 130 ITR 739, held that the assessee was entitled to investment allowance. The Tribunal confirmed the finding of C.I.T. (Appeals) after referring various judgements in its impugned order.

6. Both Mr.D.D.Vyas, the learned standing counsel for the applicant - revenue and Mr.Manish J.Shah, the learned advocate for the respondent - assessee, accepted the fact that identical controversy has been decided by this Court in case of C.I.T. v. Professional Information Systems & Management in Income Tax Reference No.304 of 1992, decided today i.e. 19th January 2005, by this Court, and that the said issue stands concluded by the aforesaid decision of this Court.

7. Accordingly, question No.1 relating to motor car expenses is answered in favour of the assessee and against the revenue, following the decision in earlier year in assessee's own case as well as the decision in case of Sayaji Iron Engineering Co. v. C.I.T. (2002) 253 ITR 749.

7.1 Similarly, question No.2 is also answered in favour of the assessee and against the revenue following the decision in case of C.I.T. v. Professional Information Systems & Management (supra) rendered in Income Tax Reference No.304 of 1992.

8. The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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